IN THE HIGH COURT OF JUDICATURE AT BOMABY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4628 OF 2005

Anmol Transport Company. ..Petitioner.
Vs.
BSNL and ors. ..Respondents.

Mr. D.B. Patil and Meenakshi Patil for the Petitioner.

Ms. Sonia Miskin with Mr. Masurkar for the Respondents.

CORAM: SMT.RANJANA DESAI,J.
DATED: 21.9.2005.

PC:

1. The petitioners are original defendants in Special Civil Suit No.65/2004 filed in the Court of Civil Judge, S.D. Kalyan for recovery of sum of Rs.16.64 lacs. The suit was filed on 24.4.2004 and on 27.4.2005 summons was issued to the defendants. It was made returnable on 3.7.2004. The summons was served on 17.5.2004. On 3.7.2004, the suit was listed before the Trial Court. The defendants filed their appearance but no written statement was filed. The defendants prayed for extension of time to file their written statement as the time limit had expired. On that day i.e. on 3.7.2004, the Trial Court passed the following order.

. "Allowed"

The suit was adjourned to 21.8.20094. In the mean time 90-days from service of summons period had expired. On 21.8.2004, the defendants filed application Exh.9 praying that they may be allowed to file the written statement. On that day, in the morning session the plaintiffs and their advocate were absent. The matter seems to have been kept back by ordering the plaintiffs to submit their say. It appears that it was again called out and the application was allowed.

2. The respondent plaintiff then filed an application Exh.12 praying that the order passed on Exh.9 allowing the defendants to file their written statement be recalled. It was urged that the defendants did not serve Exh.9 on the plaintiffs. The Trial Court dismissed that application on the ground that fraud is not pleaded. The Trial Court also relied on the ruling of the Supreme Court in Kailash Vs. Nanku and others 2005(2) Mah. L.J. Page 575.

3. The learned counsel for the petitioner was absent yesterday hence, this matter was kept today. Today again he is absent. I heard the learned counsel for the defendants. She has placed reliance upon the judgment of the Supreme Court in Salem Advocate Bar

Association T.N. Vs. Union of India (2005) 6 SCC 344 and contended that the impugned order merits no interference. In my opinion, the approach adopted by the Trial Court is correct. The written statement appears to have been taken on record to avoid injustice. In the facts of this case such order does not merit any interference. However, the plaintiff must be relieved of the burden of paying costs. Hence, I pass the following order.

ORDER

a) The impugned order to the extent to which it saddles the plaintiffs to pay costs is set aside. Parties to bear their own costs. Rest of the impugned order is confirmed.

b) Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)